IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2006

CORAM

THE HONOURABLE MR. JUSTICE S. ASHOK KUMAR

CRIMINAL REVISION CASE NO.1592 OF 2004

Natarajan,
S/o. Kandasamy .. Petitioner

Vs.

Palaniammal
D/o. Kandasamy .. Respondent

Revision filed under Sections 397 and 401 of the Criminal Procedure Code against the order dated 20.7.2004 made in C.R.P.No.94 of 1999, on the file of I Addl. Sessions Court, Salem reversing the order dated 13.7.1999 made in M.C.No.14 of 1998, on the file of Judicial Magistrate No.II,Sankari.

For Petitioner : Mr.N. Manokaran

For Respondent : Mr.C.D. Johnson

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O R D E R

This Revision has been filed against the order of the learned I Addl. Sessions Judge directing the petitioner to pay maintenance to the respondent.

2. The brief facts of the case are as follows :-

Petitioner is the husband of the respondent and they got married in the year 1984. Till 1992, they lived together and out of the wedlock, they gave birth to a daughter and a son. According to the Revision Petitioner, the respondent deserted her husband and she did not want to live with him and therefore a Panchayat was held on 14.2.1992. The panchayat, as per the community custom of the petitioner and the respondent, divorced each other and it was decided by the Panchayat that the daughter born to them by name Jagadesswari could be brought up by the father and the son PrakashKUmar could be brought up by the

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mother. A sum of Rs.60,000/- was paid towards maintenance for the mother and the son and all the sridhana articles given to the respondent were also returned to her. Six years after, in the year 1998, the respondent filed a petition for maintenance for herself and her son in M.C.No.14 of 1998. Learned Judicial Magistrate No.II, Sankari, who tried the case, by order dated 13.7.1999, came to the conclusion that the respondent (wife) is not entitled for maintenance, but directed the petitioner to pay a sum of Rs.500/- every month to the minor son Prakash Kumar. Aggrieved over the said order, in September 1999, the respondent filed C.R.P.No.94 of 1999. The said Revision Petition was dismissed on 6.7.2001 for non-appearance of both the parties. Aggrieved over the said dismissal order, the respondent filed Crl.O.P.No.13472 of 2002 before this Court and the same was allowed with a direction to the Sessions Court to pass orders on merit. Thereafter, the learned I Addl. Sessions Judge passed the impugned order on 20.7.2004 directing the petitioner to pay a sum of Rs.300/- every month to the respondent as maintenance from 13.7.1999. Aggrieved over the said order, this Revision is filed by the husband / petitioner herein.

3. Mr. Manokaran, learned counsel for the petitioner, would contend that the order of maintenance cannot be sustained on two grounds. Firstly, when the respondent was not willing to live with her husband as stated by her in the Panchayat, she is not entitled for maintenance as found in Second Proviso to Section 125(3) Cr.P.C. Secondly, as per the customs prevailing in the community, the respondent has received a total sum of Rs.60,000/- towards maintenance for herself and her minor son at the time of divorce as per Ex.B-1, a panchayat muchalika executed by both the petitioner and the respondent. Therefore, she would not be entitled for further maintenance.

4. Per contra, Mr.C.D. Johnson, learned counsel appearing for the respondent would contend that even a divorced wife is entitled for maintenance and Ex.B-1 is a concocted document and should not be relied upon, and also stated that the respondent did not desert her husband.

5. I gave my anxious consideration to the rival contentions raised by both the parties.

6. As regards the first ground raised by the learned counsel for the Revision Petitioner that the respondent deserted her husband and was not living with him is concerned, it is a pure question of fact. In Ex.B-1 it is clearly stated that the respondent did not want to live with her husband and, therefore, divorce is effected. No other reason is stated for divorce in

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Ex.B-1 divorce deed executed between them. Second proviso to Section 125(3) Cr.P.C., being relevant for this case, is extracted hereunder :-

> "Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if her is satisfied that there is just ground for so doing."

7. At the time of Ex.B-1, the petitioner has not contracted his second marriage. Under Ex.B-1, it is stated that both the parties after execution of Ex.B-1 are entitled to re-marry. It is not the case of the respondent that the petitioner got married with another woman while the marriage was in existence. It is also not her case that the petitioner had kept a mistress prior to the date of Ex.B-1. Therefore, there is no reason for the wife to refuse to live with her husband. To support his contention, Mr. Manokaran, learned counsel for the revision Petitioner has pressed into service a decision of the Hon'ble Supreme Court in 2004 SCC (Cri) 164 [DEB NARAYAN HALDER v. ANUSHREE HALDER (SMT)]. It was a case where the wife left her matrimonial home without any justifiable grounds. The Hon'ble Supreme Court has held that when the respondent was not ill-treated or demanded and dowry, there is no justification for the wife to live separately and thus the order of the learned Magistrate, who dismissed the application filed by the wife for maintenance, should not be interfered with.

In this case also the respondent has not shown any sufficient cause or reason for deserting her husband.

8. As regards the second ground raised by the Revision Petitioner is concerned, the respondent agreed for divorce by mutual consent. But, the executiong of Ex.B-1 document is denied by her. The learned Magistrate has compared the signature of the respondent in the deposition with that of the signature as found in Ex.B-1 and found that both the signatures tallied. I have also perused the signature found in the deposition as well as Ex.B-1 and it can be safely concluded that the signature found in Ex.B-1 is that of the respondent. Apart from the respondent, her brother Periasamy and father Kandasamy have also signed as witnesses in Ex.B-1. Therefore, Ex.B-1 cannot be suspected as a forged document. Under Ex.B-1 the respondent has received back all her movable properties and Rs.60,000/- cash undertaking that she will not claim maintenance for herself and her son.

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9. Learned counsel for the petitioner would contend that the respondent is well-off and her father is a tobacco merchant and an agriculturist and therefore she is is not in need of money. In fact after deserting her husband in 1992, the respondent filed petition for maintenance only in 1998, six years thereafter, which will show that the respondent has sufficient means to maintain herself and that too when a sum of Rs.60,000/- has been paid towards maintenance. However, the learned counsel appearing for the Revision Petitioner would concede that inspite of Ex.B-1, he is willing to continue to pay maintenance to his son. Therefore, maintenance claimed by the wife is not justifiable and the order of the learned I Addl. Sessions Judge granting Rs.300/- as maintenance every month from 13.7.1999 to the respondent is set aside. However, the petitioner shall continue to pay maintenance to the minor son as ordered earlier by the learned Judicial Magistrate.

10. In the result, the Revision Petition is allowed and the order passed by the learned I Addl. Sessions Judge, Salem is set aside.

dpk

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The I Addl. Sessions Court,
   Salem.

2. The Judicial Magistrate No.II,
   Sankari

+ one cc to Mr. N. Manokaran, Advocate sr no. 42077

SGL(CO)
NM(25.10.2006)

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